

FmC Agreement No. 011760

**Cargo Slot Charterparty***Discovery Cruise Line & Seaboard Marine- May 30, 1997*

THIS CARGO SLOT CHARTERPARTY, referred to here as the "Agreement," is made as of this 30th day of May 1997 by and between Discovery Sun Partnership, a Liberian general partnership doing business as Discovery Cruise Line (the "Owner") and Seaboard Marine, Ltd., a \_\_\_\_\_ company ("Charterer"), and is with reference to the vessel DISCOVERY SUN, a Panama flagged passenger ferry or a substitute vessel named by Discovery during any drydocking or other withdrawal period in respect the DISCOVERY SUN (the "Vessel").

**Witnesseth**

WHEREAS, the Owner is operating the Vessel in the day cruise trade from South Florida, principally from the Port of Miami with mixed cruises to nowhere and to Freeport, ~~BAHAMAS AND~~

WHEREAS, the Vessel is fitted with a car deck suitable for the carriage of cars and trailers and is otherwise qualified with the necessary licenses, certificates and approvals for the carriage of non-hazardous cargos of the type in question; and

WHEREAS, Charterer is in the business of ocean transportation and business demand for cargo carriage between South Florida and Freeport, Bahamas.

NOW THEREFORE, in consideration of the mutual promises contained herein, the parties do agree as follows:

1. Vessel. The Owner represents and warrants that the Vessel is in class and in an efficient state of repair suitable for the operation of the voyages between South Florida and Freeport, Bahamas and, at all relevant times, will be so maintained so as to enable the Vessel to embark and carry the subject cargo. The Charterer acknowledges that the Vessel is primarily engaged in the passenger trades and cancellations, deviations, changes in operating schedules, and other variations in service and in the South Florida ports of call may be necessary or expedient from time to time in order to accommodate the Owner's primary passenger business.


2. Slot Charter. The Owner shall provide the Charterer with access to and the use of up to nineteen (19) forty foot trailer positions on each voyage of the Vessel to and from Freeport during the term of this charter, provided that the total gross weight of cargo loaded by the Charterer shall never exceed three hundred fifty (350) long tons. The Owner expects to operate voyages to Freeport three times each week principally from the Port of Miami but does not warrant that sailing port or the frequency of service. Each voyage as referred to herein consists of a loading in South Florida, a call at Freeport with discharge and loading, and termination again in South Florida with a discharge.

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3. **Carriage of Cargo for Owner's Account.** The Owner reserves the right to carry cargo consisting of the luggage and personal vehicles (including any merchandise carried therein) that passengers may wish to have carried in conjunction with the passage of such persons. The Owner shall also have the right to accept the shipment of break bulk luggage, merchandise and other property, exclusive of unaccompanied vehicles, provided such shipments are received at the pier and consist of shipments incidental to the carriage of passengers or are shipped by or consigned to non-commercial parties.
4. **Charter Hire.** The Charterer shall pay the Owner the charter hire sum ("Hire") in the amount of \$2,000 per voyage for the first thirteen (13) voyages operated pursuant to this charter and \$3,000 per voyage for all voyages thereafter. The Charterer shall owe the Hire to the Owner whether or not the Charterer utilizes all or any of the cargo slots chartered pursuant to this Agreement. The Charterer shall also owe the Owner the Lashing Charge provided for below. Hire sum shall be payable in a lump sum for all of the expected voyages during each week commencing on Monday and shall be paid two weeks in advance, i.e., on the Monday two weeks prior to the week for which payment is being made. Timely payment is of the essence of this charter and the failure of the Charterer to make all payments when and as due shall entitle the Owner to a late charge of the five percent (5%) of the unpaid amount, plus interest on the unpaid balance at the rate of 1½% per month.
5. **Duration.** The charter of the subject cargo capacity shall commence with service from the Port of Miami commencing June 9, 1997. The charter shall continue thereafter until cancelled by either party by the giving of written notice to the other not less than thirty (30) days prior to the intended last voyage covered by the charter pursuant to this Agreement. The parties agree to re-evaluate the financial aspects of this charter and renegotiate the rate of Hire as of September 1, 1997. Failing agreement to a revised rate the charter shall continue at the rate agreed herein until cancelled by either party. In the event the Vessel is sold or chartered to others, or is repositioned outside of South Florida or no longer serves Freeport, the Owner shall give the Charterer such notice as is reasonable under the circumstances and the charter shall come to an end with the last Freeport voyage.
6. **Change of Port.** In the event the Owner elects to move the principal port of operation to Port Everglades, the Charterer agrees to load its cargo at Port Everglades upon receiving not less than seven (7) days notice of the relocation, and provided Port Everglades affords the Vessel the use of a pier which is suitable for the loading of the Charterer's cargo.
7. **Service Deviation, Interruptions, Cancellations.** The Owner shall have the right to delay, advance, cancel or reschedule any voyage and, once having set out, may return to port for any reason whatsoever. In such event, shall owe the Charterer nothing in respect to such deviations from the announced service. In the event the Vessel is disabled, grounded, or is lost, the Owner shall give the Charterer such notice of the event and the expected changes or suspension of the service as may be reasonable under the circumstances. In the event of regularly scheduled maintenance and dry docking, the Owner shall give the Charterer notice



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of the expected dates when the Vessel will be withdrawn from service when and as it becomes known or determined by the Owner.

**8. Cargo Operations-Insurance, Risk Allocations, Indemnity.**

a. The Owner shall be solely responsible for the seaworthiness of the Vessel in accordance with the Carriage of Goods by Sea Act, 46 USC §1300 *et seq* ("COGSA"). For the purposes of these parties, the Owner's obligation to the Charterer for any loss or damage shall be limited to \$500 per package, or whatever greater amount as may be provided for in printed clauses of the Charterer's Bill of Lading. The Owner shall not have any liability in excess of the \$500 per package limitation where the limitation has been specifically waived by the Charterer or where the Charterer has agreed to a different package limitation amount.

b. The Charterer shall be solely responsible for supervision of the stevedore and the longshoremen engaged in the loading of the Charterer's cargo including the safe loading, unloading, and securing of the cargo. The Owner shall provide such lashing gear as the Vessel currently has but is not required to replace or repair same. The Charterer shall procure, provide, maintain, repair and replace any lashing gear that is necessary in addition to or in supplementation of that gear made available to the Charterer by the Owner. The Charterer shall owe the Owner, in addition to the Hire, a "Lashing Charge" of \$10 per trailer and \$5 per car each way to or from Freeport for the use of the Vessel's lashing and stowage gear.

c. The Charterer shall indemnify and does hereby hold harmless and will defend the Owner, its officers, directors, employees, agents and underwriters from and against all liability in respect to any and all property damage, loss of life or personal injury that may occur during the loading or unloading of cargo, or that may otherwise arise in any manner as a result, direct or indirect, of (i) the loading or unloading of cargo, or (ii) the manner in which the cargo is stowed, positioned or secured, unless caused by the negligent act or omission of the Owner or its employees, officers or agents.

d. The Owner shall indemnify and does hereby hold harmless and will defend the Charterer, its officers, directors, employees, agents and underwriters from and against all liability in respect to any and all property damage, loss of life or personal injury that may occur as a result of the operation of the Vessel and its navigation, maintenance and control, unless caused by the negligent act or omission of the Charterer, its officers, employees and/or agents, provided however, that the liability for property damage shall be limited to those events or occurrences which the carrier cannot otherwise disclaim under COGSA and provided always that the \$500 package limitation shall apply as provided above.

e. Each of the parties shall obtain insurance for their respective obligations under this Agreement. Each party shall cause the other to be named as an additional insured



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under its insurance cover or covers and the opposite party shall be provided with evidence of such insurance.

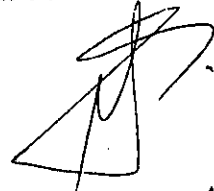
f. All Vessel operating expenses shall be for the account of the Owner. The Charterer shall be responsible for and shall pay all costs incurred in loading, discharging or any handling whatsoever of the cargo carried pursuant to this charter. The Owner will provide the Charterer with unimpeded, reasonable and timely access to the Vessel for the loading and unloading of cargo, as is reasonable in light of the Vessel's operating schedule. The Charterer shall be responsible for and shall pay all costs, charges and expenses relating to the proper and careful receipt, loading, handling, stowage, discharge and delivery of the cargo and equipment including trailers, and shall pay all sums relating to such preparations and shall be liable for all loss or damage, including damage to the Vessel, that may be caused to the Owners by improper or careless performance of such operations.

g. The cargo shall be carried pursuant to Bills of Lading issued by the Charterer in its own name. The Owner shall have the benefit of the terms and conditions of the Charterer's Bills of Lading as may be allowed by law.

h. The Master of the Vessel shall be given written notice prior to departure of any hazardous or dangerous cargo that may be loaded. Any hazardous cargo the carriage of which is arranged by the Charterer shall comply completely and fully with the requirements of the applicable Federal Statutes, Coast Guard Regulations, SOLAS Rules, and Classification Society Rules and requirements. The Charterer shall be responsible for and shall indemnify and defend the Owner from all loss or liability for damages, fines or penalties incurred as a result of the carriage of hazardous cargo whether or not such laws, treaties, regulations and rules have been complied with. No hazardous cargo or other cargo or equipment shall be loaded by the Charterer the presence of which would cause the Owner to be breach of the warranties of the Vessel's insurance policies.

i. No contraband or illegal substances or merchandise shall be included in any cargo placed aboard the Vessel. Any contraband or illegal substances found in cargo loaded by the Charterer is to be confiscated by the Master and may be destroyed without any liability therefore on the part of the Master or of the Owner. Any fines, losses, penalties or forfeitures suffered by the Vessel or the Owner due to presence of contraband or illegal substances in the Charterer's cargo shall be paid by the Charterer and the Charterer does hereby indemnify and will defend and hold harmless the Owner, its officers, directors, employees and agents from all such fines, losses, penalties or forfeitures.

j. Other than in the event of general average which causes damage to the cargo or the trailers, the Owner shall have no liability for any damage, loss, or shortage suffered by or in respect to the cargo and the Charterer shall be solely responsible for and will defend all claims by shippers in respect to cargo including claims arising out of a general average for which the Owner may have some liability. General average shall be settled in



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accordance with the York-Antwerp Rules 1994 or any subsequent amendment thereto. Owner's remuneration shall not contribute to general average. The Owner authorizes and empowers the Charterer to act as the agents of the Owner in the settlement of general average. The Charterer shall guaranty the contributions properly due the Owner in respect to cargo carried pursuant to this Agreement for which the Charterer is the principal carrier, except in respect to any goods or merchandise which has been delivered to the consignees prior to notice being given by the Owner to the Charterer that general average securities are required.

9. **Strikes, Lock-outs, etc.** The occurrence of strikes, lockouts, or other labor unrest which are specifically directed at the Charterer shall not relieve the Charterer of its obligation to pay hire notwithstanding the fact the Vessel may not be able to operate or, if operating, may not be able to load and carry the Charterer's cargo. If the strike, lockout or labor unrest is directed specifically at the Owner, the Charterer shall be entitled to nothing in respect to any cancelled voyage. The Charterer shall be relieved the obligation to pay Hire in respect to voyages during which cargo cannot be loaded or unloaded by reason of such strike, lockout or other labor unrest.

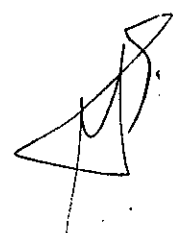
10. **Interruption of Service-No Consequential Damages.**

a. Should the Vessel be disabled or impaired by reason of an accident or breakdown, Hire payments shall be suspended from the time of her breakdown or suspension of service until the Vessel is in condition to return to service, at which time the Hire payments shall recommence in advance of the expected service re-initiation date with appropriate adjustments for the Hire not earned by reason of such suspension of service.

b. In the event the Vessel is unable to resume the service for a period of fourteen (14) consecutive days the Charterer shall have the option to terminate the charter without penalty. The notice of cancellation under this paragraph shall be given within three days of the Owners' notice to the Charterers that the Vessel will resume operation on a date certain and failure of the Charterers to declare a cancellation within such time shall constitute a waiver of the right of cancellation in respect to such non-operational period.

c. The Owner shall owe the Charterer nothing by reason of interruptions or delays in service resulting from the foregoing events or occurrences in respect matters set forth in paragraph 10(a).

d. Neither party nor its underwriters shall be responsible to the other for any incidental, special or consequential damages specifically including but not limited to any loss of use or loss of income arising out of or in respect to the performance of the charter or the breach of this Agreement.



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11. Legalities.

a. The provisions of this Agreement are separable and severable. If any provision or application shall be deemed to invalid in whole or in part, or unenforceable, such invalidity or unenforceability shall not affect other provisions, items or applications of this Agreement which can be given effect without such invalid or unenforceable provision, item or application.

b. Any notice to be given pursuant to this Agreement may be given by fax confirmed by delivery of a hard copy to the parties at their respective offices, to wit:--

If to Owner, at 1850 Eller Drive, Suite 402, Ft. Lauderdale, FL.  
Attention: Mr. Martin A. Salzedo,

and

If to Charterer, at 8050 N.W. 79th Avenue, Miami, FL  
Attention: Mr. Peter Evelyn.

DONE as of the date first written above.

Discovery Sun Partnership

By: 

Martin A. Salzedo, Manager

Seaboard Marine, Ltd.

By: 

V.P. CARIBBEAN DIVISION

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